

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In Re:

Chapter 7
Case No. 08-43731

Ciprico, Inc.

**NOTICE OF MOTION AND
MOTION FOR FINAL COMPENSATION
OF ATTORNEY FOR TRUSTEE**

Debtor.

Anthony R. Battles of the law firm of Kelly, Hannaford & Battles P. A., respectfully moves the Court for final compensation as follows:

1. The Court will hold a hearing on the within motion on Wednesday, March 3, 2010, at 10:30 A.M., or as soon thereafter as counsel may be heard in Courtroom 7W, United States Court House at 300 South Fourth Street, Minneapolis, Minnesota 55415.
2. Any response to this motion must be filed and delivered not later than February 26, 2010, which is five (5) days prior to the hearing date.
3. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 326, 330, 331, Bankruptcy Rule 2002, 2016, 9013 and 9014 and Local Rules 406, 503, and 1206. This proceeding is a core proceeding.
4. On June 8, 2009, the Court approved the employment of Anthony R. Battles and his law firm, Kelly, Hannaford & Battles, as attorneys for the Trustee. A copy of said Order is attached hereto as Exhibit A and incorporated herein.
5. Applicant requests an Order allowing final compensation for professional services rendered.

6. To the extent testimony is allowed or required, Applicant may testify as to the matters stated herein.
7. This application is for final compensation for services rendered by Applicant during the period June 9, 2009 through February 4, 2010, in connection with the termination of the Ciprico, Inc. Employee Savings Plan (the “401(k) Plan”), including handling the termination process, the distribution of 401(k) Plan assets and legal compliance issues in connection with the 401(k) Plan termination. There was also a small amount of time spent in connection with the fee application.
8. The following indicates the time spent and the reimbursement and compensation requested for these professional services:

Anthony R. Battles 39.05 hours @ \$295/hour = \$11,519.75

Holly A. Fistler 38 hours @ \$150/hour = 5,700.00

TOTAL \$17,219.75

Copies of the detailed billing statements are attached hereto as Exhibit B.

9. Applicant has not previously received interim compensation for its services in this matter.
10. Applicant has reached no agreement with any party for the sharing of any fees or expenses to be paid to him in connection with this matter except members of Applicant’s law firm.
11. To date, the Trustee has indicated that she anticipates that all administrative expenses will be paid in full.

WHEREFORE, Applicant prays that this application be approved and requests an Order of the Court authorizing final compensation to Kelly, Hannaford & Battles P.A., as attorneys for the Trustee, in the amount of \$17,219.75.

Dated: February 9, 2010

KELLY, HANNAFORD & BATTLES P.A.

By /e/ Anthony R. Battles
Anthony R. Battles, #139014
900 Baker Building
706 Second Avenue South
Minneapolis, Minnesota 55402
(612) 341-0881

COUNSEL FOR CHAPTER 7 TRUSTEE

Verification. I, Anthony R. Battles, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on February 9, 2010

/e/ Anthony R. Battles
Anthony R. Battles

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 7

Case No. 08-43731

Ciprico, Inc.,

Debtor.

ORDER APPROVING EMPLOYMENT OF ATTORNEY

Upon the foregoing Application and Recommendation and for cause shown, and pursuant to the provisions of Title 11, United States Code, Section 327,

IT IS HEREBY ORDERED that the professional employment applied for by Anthony R. Battles at the rate set forth in the application is hereby **APPROVED** subject to the limitations on compensation provided by Title 11, United States Code, Section 328.

DATED: June 8, 2009

/s/ Nancy C. Dreher

Nancy C. Dreher

Chief United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 06/08/2009 Lori Vosejpka, Clerk, by KK
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EXHIBIT B

KELLY, HANNAFORD & BATTLES P.A.
900 Baker Building
706 Second Avenue South
Minneapolis, MN 55402

Mary Jo Jensen-Carter
Buckley & Jensen
1257 Gun Club Road
White Bear Lake MN 55110

August 06, 2009

In Reference To: Ciprico bankruptcy
Invoice #22078

Professional Services

		<u>Hours</u>
6/9/2009	ARB Telephone conference with bankruptcy court clerk; review e-mail from Mary Jo Jensen Carter regarding Ciprico Plan termination; work on response to same	1.00
6/10/2009	ARB Work on Plan termination checklist	0.50
6/11/2009	ARB Draft action terminating Ciprico 401(k) Plan and action authoring distribution of Plan assets; draft outlining termination process	2.40
6/29/2009	ARB Follow up on plan distribution and termination issues	0.25
7/7/2009	ARB Work on Ciprico 401(k) Plan termination	0.85
7/8/2009	ARB Review and sign distribution forms; telephone conference with Securian regarding Plan termination issues; draft letter to Securian regarding same; draft letter to Securian regarding distribution requests	1.65
7/9/2009	ARB Review e-mail from Securian regarding 401(k) Plan termination; respond to same	0.25
7/10/2009	ARB Telephone conference with Securian regarding Plan termination; work on Plan termination issues; review participant data for distributions	1.15
7/13/2009	ARB Review Ciprico 401(k) Plan adoption certificate; analyze compliance issues and possible legally required amendments; review 2008 Form 5500, which needs to be signed and filed; review SPD; review Securian service cancellation notice; analyze legal issues regarding same	1.75

			<u>Hours</u>
7/20/2009	ARB	Work on Ciprico 401(k) Plan termination issues	1.15
7/21/2009	ARB	Telephone conference with Securian; work on Ciprico Plan termination and distribution issues; telephone conference with Securian regarding same; conference with Holly Fistler regarding same; draft notice to participants regarding applications for distributions on plan termination; review Plan document for legal compliance	2.85
	HAF	Briefed with T Battles regarding form letters and distribution requests in regarding plan termination; call with L Tezleff at Securian regarding plan termination	0.50
7/22/2009	HAF	Prepared form letter and packets for participants; Briefed with J Segal and B Zurn regarding mail merge and mailing of letters	1.00
7/28/2009	ARB	Review base 401(k) Plan document in connection with Plan termination; work on distributions to participants	1.40
	HAF	Tracked and reviewed responses for plan termination distributions	0.25
7/29/2009	ARB	Work on distribution and record-keeping fee issues; telephone conferences with Mary Jo Jensen Carter and Securian regarding same; draft letters to Securian regarding same; conference with Holly Fistler	2.25
	HAF	Tracked and reviewed responses for plan termination distributions; assembled requests for fax transmission to Securian; briefed with T Battles regarding process; email to D McDonell to confirm receipt and acceptance of fax	1.50
7/30/2009	HAF	Call with P Schnellman regarding request for termination distribution questions; briefed with T Battles	0.50
	ARB	Telephone conference with P Schnellman regarding distribution questions; review distribution list	0.25
7/31/2009	HAF	Tracked and reviewed responses for plan termination distributions; assembled requests for fax transmission to Securian; briefed with T Battles regarding payment of loan	0.50
	ARB	Process Henderson 401(k) loan repayment; process distribution requests; telephone conference with Securian regarding same	0.50
			<u>Amount</u>
For professional services rendered			22.45 \$6,112.75

User Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Anthony R. Battles	18.20	295.00	\$5,369.00
Holly A. Fistler	4.25	175.00	\$743.75

KELLY, HANNAFORD & BATTLES P.A.
900 Baker Building
706 Second Avenue South
Minneapolis, MN 55402

Mary Jo Jensen-Carter
Buckley & Jensen
1257 Gun Club Road
White Bear Lake MN 55110

September 01, 2009

In Reference To: Ciprico bankruptcy
Invoice #22093

Professional Services

		<u>Hours</u>
8/3/2009	HAF Tracked and reviewed requests for plan termination distribution; briefed with B Zurn regarding procedures	0.50
8/4/2009	HAF Tracked and reviewed requests for plan termination distributions; briefed with T Battles; fax to B Tetzlaff; letters to A Sorenson and V Nguyen; telephone conversations with S Briggs and S Labella	3.25
	ARB Conference with Holly Fistler regarding distribution issues and problems; review and process distribution request forms	1.50
8/5/2009	HAF Tracked and reviewed requests for plan termination distributions; briefed with T Battles	0.25
	ARB Review distribution list; draft letter to Jensen-Carter regarding status of plan termination; process distribution requests	0.50
8/6/2009	HAF Drafted email to participants regarding distribution of plan assets	0.25
8/7/2009	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; letter to P Nealy regarding opinion letter; briefed with T Battles	0.50
	ARB Work on 401(k) Plan distributions and process same	0.35
8/10/2009	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	0.50
	ARB Follow up on Bow distribution request; process additional distribution requests	0.50

		<u>Hours</u>
8/11/2009	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	0.25
8/13/2009	HAF Tracked and reviewed requests for plan termination distributions	0.25
8/14/2009	ARB Process distribution requests	0.25
8/17/2009	ARB Process Ciprico distribution requests	0.25
8/18/2009	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	1.25
	ARB Process Ciprico 401(k) Plan distribution requests	0.75
8/19/2009	HAF Tracked and reviewed requests for plan termination distributions	0.25
	ARB Process Ciprico 401(k) Plan distribution requests	0.35
8/20/2009	HAF Tracked and reviewed requests for plan termination distributions; briefed with T Battles	0.50
	ARB Telephone conferences with 401(k) Plan participants regarding distributions; telephone conference with Securian regarding same; process distribution requests	0.50
8/21/2009	ARB Process Ciprico distribution requests	0.25
8/24/2009	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	1.50
	ARB Process Ciprico 401(k) Plan distribution requests	0.75
	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	1.50
8/25/2009	ARB Process Ciprico 401(k) distribution requests	0.25
	HAF Tracked and reviewed requests for plan termination distributions; telephone conversations with K Witte and G Goodman regarding questions	0.25
8/26/2009	ARB Process Ciprico 401(k) Plan distribution requests	0.25
	HAF Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles; telephone conversation with R Schwartz and Dean Dunnigan regarding questions	0.75
8/27/2009	HAF Tracked and reviewed requests for plan termination distributions; email correspondence with J Lunacek	0.50

			<u>Hours</u>
8/28/2009	ARB	Telephone conference with Securian regarding Higgins distribution; process distribution requests	0.35
	HAF	Tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	0.50
8/31/2009	HAF	Telephone conversation with Heideman; tracked and reviewed requests for plan termination distributions; fax to B Tetzlaff regarding signed requests; briefed with T Battles	0.75
	ARB	Telephone conference with Securian regarding Schnellman and process distribution request	0.35

		<u>Amount</u>
For professional services rendered	20.65	\$4,471.75

User Summary			
<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Anthony R. Battles	7.15	295.00	\$2,109.25
Holly A. Fistler	13.50	175.00	\$2,362.50

KELLY, HANNAFORD & BATTLES P.A.

900 Baker Building
706 Second Avenue South
Minneapolis, MN 55402

Mary Jo Jensen-Carter
Buckley & Jensen
1257 Gun Club Road
White Bear Lake MN 55110

October 06, 2009

In Reference To: Ciprico bankruptcy
Invoice #22222

Professional Services

		<u>Hours</u>
9/1/2009	HAF Briefed with T Battles regarding request deadline and next steps for plan termination distributions; email correspondence with M Schoberg regarding question on status of distribution; tracked received requests and verified KHB list against Securian list	0.50
9/3/2009	HAF Tracked received requests; briefed with T Battles; email correspondence with M Schoberg	0.25
	ARB Process distribution request; respond to participant inquiry	0.25
9/4/2009	HAF Telephone call and email correspondence with M Schoberg regarding rollover request	0.25
	ARB Process distribution request; respond to participant inquiries	0.25
9/10/2009	HAF Briefed with T Battles and T Rice regarding possible IRA vendors for lost participant accounts; tracked received requests; fax to B Tetzlaff	0.50
	ARB Work on distribution issues; conference with Fislter and Rice regarding IRS IRA rollover vendors for missing participants; draft new letter for non-electing participants; review Plan document regarding automatic cash-out provisions and default rollovers	1.00
9/11/2009	HAF Prepared follow-up mailings to participants regarding termination distribution request forms	0.75

			<u>Hours</u>	
9/14/2009	HAF	Sent out follow-up mailings to participants re: termination distribution request forms	0.25	
9/23/2009	HAF	Revised letter and envelopes regarding final reminder to participants before default distribution; briefed with T Battles	0.75	
	ARB	Work on 401(k) distribution issues	0.25	
9/24/2009	HAF	Sent out follow-up mailings to participants re: termination distribution request forms; Briefed with T Battles; called participants regarding reminders on termination distribution requests; briefed with T Rice regarding IRA vendors for lost participants; received and tracked distribution requests; fax to B Teztlaff	1.75	
	ARB	Process distribution requests; work on location of missing participants	0.40	
9/25/2009	HAF	Call with T McGee regarding termination distribution request; fax to B Tetzlaff; call with B Teztlaff regarding required signed distribution request	0.50	
	ARB	Work on 401(k) distribution issues with Holly Fistler	0.35	
9/28/2009	HAF	Tracked received requests for distribution; briefed with T Battles; fax to B Tetzlaff; telephone call with M Skertich regarding rollover request and how-to instructions	0.50	
9/29/2009	ARB	Process distribution requests	0.15	
9/30/2009	HAF	Telephone call with M Skertich regarding questions on termination distribution request form and submission; tracked received distribution payments; briefed with T Battles	0.50	
				<u>Amount</u>
For professional services rendered			9.15	\$1,919.25
Previous balance				\$10,584.50
Balance due				<u>\$12,503.75</u>

User Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Anthony R. Battles	2.65	295.00	\$781.75
Holly A. Fistler	6.50	175.00	\$1,137.50

KELLY, HANNAFORD & BATTLES P.A.

900 Baker Building
706 Second Avenue South
Minneapolis, MN 55402

Mary Jo Jensen-Carter
Buckley & Jensen
1257 Gun Club Road
White Bear Lake MN 55110

February 04, 2010

In Reference To: Ciprico bankruptcy
Invoice #22475

Professional Services

		<u>Hours</u>
10/2/2009	HAF Tracked received distribution payments; briefed with T Battles; fax to B Teztlaff	0.25
	ARB Process distribution request; conference with Holly Fistler regarding outstanding distribution issues	0.50
10/6/2009	HAF Tracked received distribution payments; briefed with T Battles regarding status of remaining participants; call to M Skertich regarding Distribution Request Form; call to T Calef regarding questions on direct rollover to eligible retirement plan; call to B Tetzlaff regarding questions for direct rollover form for T Calef	1.00
	ARB Work on distribution issues; conference with Holly Fistler regarding same	0.40
10/7/2009	HAF Tracked received distribution payments; briefed with T Battles; fax to B Teztlaff	0.25
	ARB Process distribution requests	0.25
10/8/2009	ARB Process distribution requests	0.25
10/12/2009	HAF Tracked received distribution payments; summary for T Battles regarding status of participants still in plan; briefed with T Battles, call to B Tetzlaff regarding remaining six participants in plan	0.50
10/13/2009	HAF Call to B Teztlaff regarding four remaining letters; briefed with T Battles; prepared and sent letters for four remaining participants	1.00
	ARB Review legally required 2009 Pension Protection Act and HEART Act amendments; work on final Form 5500-Annual Report filing issues; work on distributions and close-out of final accounts; telephone conference with Securian	2.40

		<u>Hours</u>
	regarding same; work on establishment of default IRAs; edit final distribution demand letter to participants	
10/21/2009	HAF Telephone calls with D Llamas regarding request for termination distribution form; briefed with T Battles; received and tracked request for termination distribution; fax to B Tetzlaff; briefed with T Rice and T Battles regarding financial institution for default rollovers; call to D Genz at Security Bank & Trust regarding default rollovers	1.50
	ARB Work on termination and distribution issues; work on default rollover options; process distribution requests	1.40
10/26/2009	HAF Call to D Genz regarding default rollovers to IRA accounts for missing participants; briefed with T Rice and T Battles; additional attempted contact with J Brown regarding request for termination distribution; email regarding IRA paperwork from Security Bank & Trust	1.25
	ARB Conference with Holly Fistler; work on missing participant issues; analyze legal issues regarding default rollover distribution	0.75
10/27/2009	HAF Briefed with T Rice and T Battles regarding IRA rollover; reviewed DOL Field Assistance Bulletin 2004-02 regarding missing participants from terminating DC plans; call to D Genz regarding IRA agreements; calls to S Werner regarding setting up rollover IRAs; calls to B Tetzlaff regarding default direct rollover distributions; completed required agreements and applications; fax to B Tetzlaff regarding default direct rollover distributions; briefed with T Battles	5.50
	ARB Work on default rollovers for remaining 401(k) participant and process same	1.85
10/28/2009	HAF Call to B Teztlaff regarding confirmation of establishment of IRAs; call with J Brown regarding request for termination distribution; call to B Teztlaff regarding confirmation of distribution request; briefed with T Battles	1.00
10/29/2009	HAF Telephone conversation with J Brown regarding IRA establishment	0.25
11/2/2009	HAF Call to J Brown regarding IRA rollover; call to S Malhotra regarding rollover to Sun Trust Bank and request for Trustee-to-trustee transfer	0.25
11/4/2009	HAF Call to J Brown regarding status of IRA establishment; call to B Tetzlaff regarding last participant; call to S Werner at Security Bank & Trust	0.50
11/9/2009	HAF Call to J Brown regarding direct rollover; calls with B Teztlaff regarding rollovers to Security Bank; call to S Werner regarding status of rollovers	0.25
	ARB Conference with Holly Fistler; work on final 401(k) distribution and IRS Form 5500-Annual Report issues	0.75

			<u>Hours</u>
11/10/2009	HAF	Call to J Brown regarding direct rollover; call to B Teztlaflaff; letter to S Labella to forward final 401(k) statement	0.25
	ARB	Work on final 401(k) distribution issues; conferences with Holly Fistler regarding same	0.35
11/12/2009	ARB	Review final distribution report for CIPRICO 401(k) Plan and work on final Form 5500 issues	0.65
1/20/2010	ARB	Work on Ciprico fee application	0.50
2/4/2010	ARB	Work on Ciprico Fee Application	1.00
			<u>Amount</u>
For professional services rendered			24.80 \$5,322.25
Previous balance			\$12,503.75
Balance due			<u>\$17,826.00</u>

User Summary			
<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Anthony R. Battles	11.05	295.00	\$3,259.75
Holly A. Fistler	13.75	150.00	\$2,062.50

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION**

In Re:

Chapter 7

Case No. 08-43731

Ciprico, Inc.

**ORDER ALLOWING FINAL
COMPENSATION OF ATTORNEY
FOR TRUSTEE**

Debtor.

At Minneapolis, Minnesota.

The above entitled matter came duly on for hearing on March 3, 2010, before the undersigned Judge of Bankruptcy Court upon the application of Anthony R. Battles and his firm Kelly, Hannaford & Battles for compensation as attorney for the Chapter 7 Trustee. Appearances on behalf of the motion are as noted in the record. Upon all the files, records and proceedings herein and the Court being duly advised in the premises,

IT IS HEREBY ORDERED that the motion of Anthony R. Battles for final fees as attorney for the Trustee is allowed in the total amount of \$17,219.75.

Dated this _____ day of _____, 2010.

Nancy C. Dreher
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In Re:

Chapter 7
Case No. 08-43731

Ciprico, Inc.

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Jessica Segal, employed by Anthony R. Battles, attorney licensed to practice law in this Court, with office address of Kelly, Hannaford & Battles P.A., 900 Baker Building, 706 Second Avenue South, Minneapolis, Minnesota 55402, declare that on February 9, 2010, I mailed copies of the NOTICE OF MOTION AND MOTION FOR FINAL COMPENSATION OF ATTORNEY FOR TRUSTEE AND PROPOSED ORDER to each entity named below at the address stated below for each entity by first class mail postage prepaid:

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Elizabeth Weller
Linebarger, Goggan, Blair & Sampson, LLP
2323 Bryan Street, Suite 1600
Dallas, TX 75201

Katherine A. Constantine, Esq.
Dorsey & Whitney, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498

Robert L. Eisenbach III, Esq.
Cooley Godward Kronish, LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800

Peter C. Brehm, Esq.
Peter C. Brehm & Associates, P.S.C.
7825 Washington Avenue, Suite 500
Minneapolis, MN 55439

Linda Boyle
Time Warner Telecom, Inc.
10475 Park Meadows Drive, #400
Littleton, CO 80124

John R. Stoeber
Lapp, Libra, Thomson, Stoeber & Pusch
120 South 6th Street, Suite 2500
Minneapolis, MN 55402

John R. McDonald
Briggs & Morgan, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402

Mary Jo A. Jensen-Carter, Trustee
1257 Gun Club Road
White Bear Lake, MN 55110

And, I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on: February 9, 2010

/e/ Jessica Segal
Jessica Segal